

RECEIVED

MAY - 8 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Communications Assistance for) CC Docket No. 97-213
Law Enforcement Act) DA 98-762
)

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to the April 20, 1998 Public Notice of the Federal Communications Commission ("Commission"),^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on extending the compliance date of the Communications Assistance to Law Enforcement Act ("CALEA").

In the Public Notice, the Commission seeks comment on whether extension of the October 25, 1998 compliance date is warranted and how the Commission can most quickly and efficiently provide that extension.^{2/} Given the ongoing uncertainty surrounding the implementation of CALEA's surveillance obligations, the non-existence of commercially-available CALEA-compliant technology and the limited time remaining before carriers will be subject \$10,000/day civil penalties, the Commission should grant a blanket two-year extension of the October 25, 1998 compliance date, as provided by Section 107(c)(3)(B) of CALEA, for all telecommunications carriers subject to CALEA.

^{1/} Public Notice, "In the Matter of: Communications Assistance for Law Enforcement Act, CC Docket No. 97-213," DA 98-762, released April 20, 1998.

^{2/} *Id.* at p. 4.

No. of Copies rec'd
List ABCDE

075

Additionally, the Commission should suspend the compliance date, pending resolution of the myriad technical, legal and administrative issues regarding CALEA compliance. Given the time that will be required to resolve these complex issues, an extension of the date to October 25, 2000 -- two years from the existing statutory deadline -- may not provide carriers and vendors sufficient time to create, develop and implement CALEA-compliant technology. Once these issues are resolved by a final order of the Commission, it should initiate the two-year compliance period.^{3/}

II. DISCUSSION

A. Extension of the October 25, 1998 CALEA Implementation Date is Warranted By the Lack of Commercially-Available CALEA-compliant Technology

Pursuant to Section 107(c) of CALEA, the Commission has authority to extend the CALEA compliance date where a carrier has demonstrated that compliance "is not reasonably achievable through application of technology available within the compliance date."^{4/} As a number of industry participants have advised the Commission, carriers cannot comply with CALEA's compliance dates due to the lack of commercially available CALEA-compliant technology and the continuing dispute regarding the establishment

^{3/} Pursuant to Section 107(c)(3)(1), carriers may request "1 or more extensions of the deadline for complying with the assistance capability requirements. . . ." Given the ongoing uncertainty surrounding CALEA's requirements and the extent to which manufacturers, vendors and carriers will be able to comply with the capability obligations, the grant of a blanket extension should not be construed as prohibiting carriers from seeking, on a case-by-case basis, future extensions as necessary.

^{4/} CALEA at Section 107(c)(2).

of appropriate standards for such technology.^{5/} As US West stated in the Commission's CALEA proceeding late last year, CALEA is not reasonably achievable for any carrier prior to having CALEA-compliant equipment available on an industry-wide basis.^{6/} USTA asserts that compliance is not just unreasonable, but is, in fact, *impossible* by the October 25, 1998 compliance date.^{7/}

Nextel supports these commenters and agrees that the Commission should provide a blanket two-year extension for all telecommunications carriers subject to the October 25, 1998 compliance date. Until the standards issues are resolved by the Commission, there will be no CALEA-compliant technology, and **no carrier** will have the capability to fulfill CALEA's surveillance obligations within the next five months. Additionally, no standard

^{5/} See Petition for Rule Making of the Telecommunications Industry Association ("TIA") at pp. 5-6; Petition for Extension of Compliance Date of AT&T Wireless Services, Inc., Lucent Technologies, Inc. and Ericsson, Inc. ("AT&T Petition") at p. 5; and Petition for Extension of the Compliance Date of the United States Telephone Association ("USTA Petition") at pp. 4-5; see also Comments filed in response to the Commission's October 10, 1997 Notice of Proposed Rule Making in CC Docket No 97-213: Comments of United States Telephone Association ("USTA") at pp. 11-13; SBC Communications, Inc. ("SBC") at p. 24; 360 Communications Company ("360 Communications") at pp. 7-8; Bell Atlantic Mobile Systems, Inc. ("Bell Atlantic") at p. 8; Primeco Personal Communications, L.P. ("Primeco") at p. 5; Personal Communications Industry Association ("PCIA") at p. 3; United States Cellular Corporation ("US Cellular") at p. 1; and U.S. West at p. 30.

^{6/} Comments of US West, filed December 12, 1997, at p. 30. See also Comments, filed December 12, 1997, of PCIA at p. 5; Cellular Telecommunications Industry Association ("CTIA") at p. 7; US Cellular at p. 2.

^{7/} USTA Petition at p. 4.

can be debated, established, implemented and deployed on carriers' systems within such a limited time frame.

Every carrier is faced with the same lack of CALEA-compliant hardware and software and will, therefore, be seeking an extension of the deadline. Therefore, the Commission should, in the interest of preserving both industry and Commission resources and administrative efficiency, grant a two-year blanket extension. Even if the Commission were to consider each carrier's extension request on a case-by-case basis, resolving all of them in a timely and efficient manner would be unlikely -- if not impossible -- prior to the October 25, 1998 deadline.

Moreover, the blanket extension should be granted for two years to provide manufacturers sufficient time to develop the necessary technology and equipment for complying with CALEA once the necessary standards are in place. As AT&T, Lucent, Ericsson, and TIA stated in their petitions herein, the development of CALEA-compliant technology will require at least 24 months.^{8/} Any shorter extension could unfairly and unwarrantedly subject carriers to CALEA's \$10,000 per day civil penalties.

B. The Commission Should Toll The CALEA Compliance Deadline Pending Resolution of the CALEA Implementation Standard

In light of the ongoing debate over the appropriate technological standard to implementing CALEA's surveillance

^{8/} AT&T Petition at p. 7; TIA Petition at pp. 7-8. See also Comments of SBC Communications, Inc., filed December 12, 1998, in the Commission's CALEA proceeding, at p. 24, stating that it will take at least two years just to develop the switch software needed to meet the CALEA assistance capability requirements.

obligations,^{9/} the Commission should toll or suspend the CALEA compliance date, pending the resolution of the industry standard. Specifically, as requested by TIA, the Commission should suspend CALEA compliance until a standard has been established pursuant to a final Commission order.^{10/} Contrary to the FBI's Petition,^{11/} carriers and manufacturers cannot begin implementing the interim standard, pending the outcome of this proceeding, because it would result in a waste of valuable resources should the ultimate standard vary from the current interim standard.^{12/} There is general agreement among industry participants that it will take at least two years to develop the necessary technology. Thus, merely extending the current October 1998 date for two years to October 2000 would be an arbitrary decision since there is no assurance that a final standard will be established by October 1998. Suspension of the current deadline would provide carriers the minimum time necessary to implement CALEA pursuant to industry-established standards and would ensure

^{9/} Additionally, the Commission has not yet acted on its Notice Of Proposed Rule Making, CC Docket No. 97-213, released October 10, 1997, which queried whether cable operators, electric utilities and other service providers are subject to CALEA's obligations.

^{10/} TIA Petition at p. 7.

^{11/} Joint Petition for Expedited Rule Making of the FBI and the Department of Justice at pp. 24-25.

^{12/} *Id.* at p. 6; see also AT&T Petition at p. 7 (implementing the interim standard, in light of the ongoing disagreement over its legality, would expose vendors "to enormous expense of money and engineering resources...").

that they are not subject to substantial civil penalties for events beyond their control.

III. CONCLUSION

For these reasons, Nextel respectfully requests that the Commission suspend the CALEA compliance date, and extend it for two years from the date of a final Commission order establishing CALEA implementation standards.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert S. Foosaner", written over a horizontal line.

Robert S. Foosaner
Vice President
and Chief Regulatory Officer

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
1450 G. Street, N.W.
Suite 425
Washington, D.C. 20005
202-296-8111

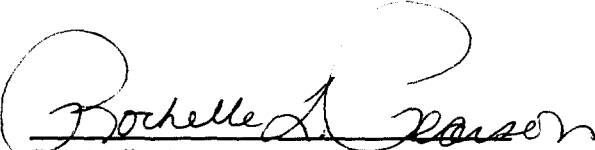
Date: May 8, 1998

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 8th day of May 1998, I caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

**David Wye
Senior Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, D.C. 20554**

**Lawrence Petak, Chief
New Technology Development Division
Federal Communications Commission
2000 M Street, NW, Room 230
Washington, D.C. 20554**


Rochelle L. Pearson